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No. 79-935

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MARVIN ALLEN, STEVEN JACOBSMEYER and
UNKNOWN POLICE OFFICERS,
Petitioners,

vs.

WILLIE MCCURRY,
Respondent.

On Writ of Certiorari
To The United States Court of Appeals
For the Eighth Circuit

BRIEF OF PETITIONERS

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OPINIONS BELOW

The opinion of the District Court, filed on October 13, 1978, is reported at 466 F.Supp. 515 and appears in Appendix A to the petition for certiorari, pp. A-2 - A-3. The opinion of the Court of Appeals, 606 F.2d 795, is reproduced in Appendix B to the petition for certiorari, pp. A-4 - A-12. The opinion of the Missouri Court of Appeals, Eastern District, 587 S.W.2d 337, affirming the conviction of Willie McCurry on state felony charges arising out of matters alleged in his complaint, is reproduced in Appendix C to the petition for certiorari, pp. A-13 - A-20.

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit, reversing a judgment of the Distict Court in Petitioners' favor, was filed on October 1, 1979. Rehearing was not sought. The petition for certiorari was docketed in this Court on December 14, 1979. See 28 U.S.C. §2101. Certiorari was granted on February 19, 1980. This Court has jurisdiction by reason of 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

I. Whether the Court of Appeals erred in refusing to recognize and apply established federal rules of collateral estoppel to Respondent's action under 42 U.S.C. §1983, so as to preclude Respondent from relitigating a constitutional claim (namely a claim of unlawful search and seizure) which had been raised, fully and fairly litigated, and decided adversely to him in a prior state criminal proceeding.

II. Whether the Court of Appeals must be reversed because, as a matter of law, Respondent is estopped to maintain his action under 42 U.S.C. §1983 on the basis of the same claim of unlawful search which the record indisputably shows to have been raised, fully and fairly litigated, and decided adversely to him in a prior state criminal proceeding.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amdt. IV provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Amdt. XIV provides in pertinent part:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 1 of the Civil Rights Act of 1871 (the "Ku Klux Klan Act") as codified at 42 U.S.C. §1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress.[1]

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[1] The original text of Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, reads as follows:

> That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in the like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish means of their vindication"; and the other remedial laws of the United States which are in their nature applicable in such cases.

The federal judicial code, 62 Stat. 947, 28 U.S.C. §1738 provides:

> The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

Both the District Court and the Court of Appeals appear to have drawn the more colorful details concerning the events underlying the complaint in this case from a police report filed in response to a request for production of documents. See Docket Entry 9/12/78. Petitioners will confine their statement of the case to those facts which appear from the face of the complaint and the cross-motions for summary judgment with their supporting exhibits. (Since this case is proceeding without an Appendix, references will be to the appendices to the petition for certiorari or directly to the original documents in the record.)

On July 17, 1978, Willie McCurry (hereinafter referred to as "Respondent") filed a verified *pro se* complaint in the United States District Court, Eastern District of Missouri, against Marvin Allen, Steven Jacobsmeyer and "Unknown Police Officers" (hereinafter collectively referred to as "Petitioners"). Petition for certiorari (Pet. Cert.), A-21. The complaint was denominated by Respondent as a "Civil Rights Complaint Under 42 U.S.C. Section 1983." Id.

Claiming that Petitioners had acted in a conspiracy to violate his constitutional rights, id., paragraph 1, Respondent alleged that on or about April 9, 1977, Petitioners conducted an unlawful search of his home in St. Louis, Missouri. Id., A-22, paragraph 2. The search followed a gun battle culminating in Respondent's arrest and was conducted without a warrant. Id., paragraphs 2, 3, 5. The search yielded evidence which was introduced at a state criminal trial, whereby Respondent was convicted and imprisoned. Id., paragraph 5; see also id., A-27 -A-29. (The Court of Appeals and the District Court took notice of Respondent's conviction on one count of illegal possession of heroin and two counts of assault with intent to kill with malice aforethought in state circuit court on January 6, 1978, convictions which were affirmed by the Missouri Court of Appeals on August 14, 1979. See 466 F.Supp. 515; 606 F.2d 796; 587 S.W.2d 337; Pet. Cert. A-2, A-6, A-13.) Respondent also alleged that he was assaulted by unknown police officers after his arrest on April 9. Id., A-22, paragraph 7.

In the District Court, Petitioners moved for dismissal and partial summary judgment on Respondent's complaint. Pet. Cert., A-25. The motion for partial summary judgment was directed to Petitioner's claim of unlawful search, and adduced in support an authenticated copy of a motion to suppress evidence, filed by Respondent's defense counsel in the state trial court, and the memorandum order of the state court denying the motion except as to drugs and items not found in plain view. Id., A-26 - A-29. Petitioners sought dismissal of the claim of

assault on the ground that the complaint failed to state a claim upon which relief could be granted. Id., A-25.

In response to Petitioners' motion, Respondent (still *pro se*) filed a "Motion for Summary Judgment or Trial By Jury," admitting that the state courts had upheld the legality of the search mentioned in his complaint, but arguing that the state judgment could not have preclusive effect. Pet. Cert., A-30, paragraph 2. The cross-motion also identified a police officer who allegedly assaulted Respondent. Id., A-31, paragraph 4.

In passing on the cross-motions for summary judgment, the District Court read Respondent's complaint as raising only the issue of the legality of the entrance into and search of his home. Although recognizing that some evidence was suppressed by the state court, the District Court noted that the impact of the state court's decision on the motion to suppress was "that the police lawfully entered the house pursuant to a lawful arrest and lawfully searched the house for evidence." 466 F.Supp. 515, Pet. Cert., A-3. Thus, the same claim asserted by Respondent under 42 U.S.C. §1983 - the legality of the entrance into and search of Respondent's home - had been "litigated on the merits at his criminal trial in state court and determined adversely to his position." Id. Accordingly, the District Court held that Respondent was collaterally estopped from relitigating the constitutionality of the search. The entire complaint - including the claim of assault - was then dismissed. 466 F.Supp. 516, Pet. Cert. A-3.

On appeal, the Court of Appeals for the Eighth Circuit reversed the District Court in all respects.[2] Although the Court of Appeals acknowledged that "the search and seizure aspect of his [McCurry's] claim was ... essentially the same claim that

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[2] Insofar as the Respondent's claim of assault is concerned, Petitioners do not seek review of the Court of Appeals' judgment. See Pet. Cert. at 4 n. 1.

was litigated at the suppression hearing" (606 F.2d 797, Pet. Cert., A-7), the Court nevertheless concluded that collateral estoppel was not available to the police officers as a defense. The basis for this decision was stated as follows: "We conclude that because of the special role of the federal courts in protecting civil rights ..., and because habeas corpus is now unavailable to appellant, see *Stone* v. *Powell*, [428 U.S. 465 (1976)], it is our duty to consider fully, unencumbered by the doctrine of collateral estoppel, appellant's §1983 claims." 606 F.2d 799, Pet. Cert., A-10 - A-11. In so holding, the Court of Appeals denied that it was passing on the general question of "whether collateral estoppel applies to §1983 actions when the issues raised in the §1983 suit were determined adversely to the §1983 plaintiff in an underlying state criminal trial." Id., 797, Pet. Cert., A-17.

SUMMARY OF ARGUMENT

I.

Petitioners maintain that the Court of Appeals committed error in failing to apply general federal rules of collateral estoppel to Respondent's claim under 42 U.S.C. §1983.

This Court has frequently recognized and given effect to the well-established principle of our federal system that the judgments of state courts of concurrent jurisdiction on federal constitutional issues are entitled to preclusive effect, when the same issues are raised in federal litigation involving essentially the same parties. Considerations of comity, judicial integrity and fairness to defendants buttress this well-known tenet of federal law, and strongly militate in favor of its application to §1983 actions. Moreover, the concept of collateral estoppel is deeply rooted in Anglo-American law, and has been applied in all types of cases, including tort cases. Since this Court, in *Pierson* v. *Ray*, 386 U.S. 547 (1967), has enunciated the doctrine that liability under 42 U.S.C. §1983 is quintessentially governed by the principles of the law of torts, it is manifest that the defense of collateral estoppel, like other traditional common law defenses, must be available to defendants in §1983 cases.

Just as *Fay* v. *Noia*, 372 U.S. 391 (1963) and *Townsend* v. *Sain*, 372 U.S. 293 (1963), propagated an enormous brood of federal habeas corpus petitions, so *Monroe* v. *Pape*, 365 U.S. 167 (1961) loosed a torrent of civil rights litigation by breathing new life into 42 U.S.C. §1983 (hereinafter sometimes referred to as "§1983"). Among the problems continually faced by the lower federal courts awash in this torrent is the effect, if any, to be accorded prior state court judgments as to constitutional claims sought to be relitigated under §1983. This problem has been greatly exacerbated by the volume of civil rights complaints filed by state prisoners alleging constitutional violations which have previously been rejected in the course of state

criminal proceedings. In coping with the torrent, the vast majority of lower federal courts, relying on the established federal law of collateral estoppel, have generally accorded preclusive effect to prior state criminal judgments on constitutional issues raised by §1983 plaintiffs. In doing so, these courts have relied only partially - and frequently not at all - on the availability of federal habeas corpus relief to such plaintiffs. Petitioners now ask this Court to endorse the fundamental principles underlying these many cases, regardless of the availabilty vel non of federal habeas corpus.

Considerations of comity, judicial integrity and fairness in large measure influenced this Court in placing a limit on federal habeas corpus relief in search and seizure cases, in *Stone* v. *Powell*, 428 U.S. 465 (1978). These same considerations demand that §1983 not be transmuted into the civil analogue of federal habeas corpus - especially in search and seizure cases. In light of *Stone*, the Court of Appeals in the instant case refused to accord any preclusive effect whatsoever to the state criminal court judgment adverse to Respondent on his claim of unlawful search; and the Court of Appeals thereby not only failed to take cognizance of the policy considerations prompting *Stone* but also wholly misconceived the role to be played by federal courts in the scheme of §1983, when state judgments on federal claims are reached after full and fair litigation.

Albeit the Ku Klux Klan Act (whence §1983 is derived) and other post-Civil War legislation gave the federal courts a new and special responsibility for vindicating federal rights, nothing in the legislative history of those statutes evinces a Congressional intent to disturb the historic concurrent jurisdiction of state courts over federal constitutional questions properly before them. Rather, through §1983, Congress was wont to establish a supplementary civil remedy, to meet the exigency when the state courts could not or would not provide a full and fair opportunity to litigate claims involving federally-guaranteed rights. Use of established federal principles of col-

lateral estoppel would in no way undermine the Congressional policy or vary from the Congressional purpose embodied in §1983.

Indeed, adherence to federal preclusion rules is powerfully induced (perhaps mandated) by another statute, in its origins long antedating §1983 and reenacted without material change after §1983. Since repeals by implication are not favored in federal law, and given the equivocal legislative history of §1983, Congressional policy and intent in several areas would be best served by construing §1983 in harmony with the "Federal Res Judicata Act", 28 U.S.C. §1738. Such an harmonious construction leads ineluctably to incorporation of principles of collateral estoppel in the body of federal law developing under §1983.

The principles of collateral estoppel advocated by Petitioners are simple. When a federal constitutional issue, such as the legality of a search and seizure, is distinctly placed in issue before a state court of competent jurisdiction, fully and fairly litigated, and decided on the merits, the subsisting state judgment, be it civil or criminal, ought to preclude a subsequent action brought under §1983 by a party to the state court proceeding who seeks to raise the same federal claim. These rules can and should be applied without regard to highly technical notions of mutuality; and (although the question is not presented in the instant case) probably ought to be applied in instances (e.g., counseled guilty pleas) where resolution of the constitutional claim, if raised, would materially affect the result. (Of course, the rules need not apply when the circumstances are the same as those in *England* v. *Louisiana Medical Examiners*, 375 U.S. 411 (1964) or where the state court expressly disclaims application of or reliance on federal law in rendering its judgment.) Since the Court of Appeals failed to consider or apply these principles in this case, its judgment must be reversed.

II.

Applying established federal preclusion principles to the case at bar, it is evident that partial summary judgment was proper, and that the Court of Appeals erred in reversing the District Court. There was no issue of fact raised by the cross-motions for summary judgment. The pleadings and exhibits showed that the identical claim of unlawful search appearing in Respondent's complaint herein was raised by him in his state criminal case, wherein he was represented by counsel. The record also shows that the question of the legality of the search of Respondent's house was accorded a full and fair hearing in the state court, and that the warrantless search of the Respondent's house was held to be lawful. This decision necessarily involved a determination respecting Respondent's Fourth Amendment rights, pursuant to *Mapp* v. *Ohio*, 367 U.S. 643 (1961), as the decision of the Missouri Court of Appeals makes clear. *State* v. *McCurry*, 587 S.W.2d 337 (Mo.App. 1979); Pet. Cert. Appendix C, A-13. Although some fruits of the search were suppressed, the District Court correctly construed Respondent's complaint as seeking redress solely for the alleged warrantless intrusion into his house, pursuant to an alleged conspiracy. Both of these claims necessarily fell when the state court adjudged the warrantless entry to be lawful. Thus, Petitioners were entitled to partial summary judgment as a matter of law, and the judgment of the Court of Appeals must be reversed.

ARGUMENT

I. THE COURT OF APPEALS ERRED IN REFUSING TO RECOGNIZE AND APPLY ESTABLISHED FEDERAL RULES OF COLLATERAL ESTOPPEL TO RESPONDENT'S ACTION UNDER 42 U.S.C. §1983 SO AS TO PRECLUDE RESPONDENT FROM RELITIGATING A CONSTITUTIONAL CLAIM (NAMELY A CLAIM OF UNLAWFUL SEARCH AND SEIZURE) WHICH HAD BEEN RAISED, FULLY AND FAIRLY LITIGATED, AND DECIDED ADVERSELY TO HIM IN A PRIOR STATE CRIMINAL PROCEEDING, NOTWITHSTANDING THE UNAVAILABILITY OF FEDERAL HABEAS CORPUS.

A. Principles of Collateral Estoppel Have Consistently Been Applied In Federal Courts, As a Matter of Federal Law, and Are Implicit In and Consistent With the Body of Tort Law Which Provides the Basis of Federal Law Under 42 U.S.C. §1983.

In a case arising under the Supremacy Clause in Article V of the Constitution, this Court recently had occasion to make a number of observations which are worth quoting in full:

> A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction ... cannot be disputed in a subsequent suit between the same parties or their privies ..." ... Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. ... Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. ... Application of both doctrines is

> central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions.... To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.

Montana v. *United States*, 440 U.S. 147, 153-154 (1979) (citations and footnotes omitted). The Court then proceeded to apply the principle of collateral estoppel to preclude the United States from relitigating in federal court the constitutionality of a state statute which had already been upheld by the state courts in prior proceedings over which the Government had control.

Montana v. *United States* represents the most recent in a long series of cases in which this Court has answered in the negative the question "whether it is any longer tenable to afford a litigant more than one full and fair opportunity for judicial resolution of the same issue," *Blonder-Tongue Laboratories, Inc.* v. *University of Illinois Foundation*, 402 U.S. 313, 328 (1971), even when the issue is a federal constitutional issue and the judicial resolution is that of a state court. See, e.g., *Angel* v. *Bullington*, 330 U.S. 183 (1946); *Grubb* v. *Public Utilities Comm.*, 281 U.S. 470 (1930); *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413, 415 (1923); *Frank* v. *Mangum*, 237 U.S. 309, 333 (1915); *Robb* v. *Connolly*, 111 U.S. 624, 637 (1884); *Parrish* v. *Ferris*, 67 U.S. (2 Black) 606 (1862); *Nations* v. *Johnson*, 65 U.S. (24 How.) 195 (1861).

In developing and applying principles of res judicata and collateral estoppel in federal cases as a matter of federal law, *Donovan* v. *Dallas*, 377 U.S. 408 (1964), the Court has recognized and accepted the abandonment of highly technical notions of mutuality, *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322 (1979), and has accorded preclusive effect to prior criminal as

well as civil proceedings, see *Emich Motors Corp.* v. *General Motors Corp.*, 340 U.S. 558 (1951); *Sealfon* v. *United States*, 332 U.S. 575 (1948). The question now becomes whether 42 U.S.C. §1983 requires an exception to these settled rules.

This Court has previously intimated that established principles of res judicata and collateral estoppel would be fully applicable to actions under 42 U.S.C. §1983, e.g., *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 606 n. 18 (1975); *Wolff* v. *McDonnell*, 418 U.S. 539, 554 n. 12 (1974); *Preiser* v. *Rodriquez*, 411 U.S. 475, 497 (1973). The Court of Appeals, enamored of its own conception of the special role of federal courts in protecting civil rights, see 606 F.2d 799, Pet. Cert. A-10, saw fit to disregard these intimations in this case, but common sense and common law strongly support the express application to §1983 actions of the same principles which controlled *Montana* v. *United States, supra.*

Surely the need to stanch "the torrent of civil rights litigation of the last 17 years" is obvious. See *Monell* v. *Dept. of Social Services*, 436 U.S. 658, 724 (1978) (*Rehnquist, J.*, dissenting). The statistics reflecting the actual, incontrovertible "flood of litigation" loosed by *Monroe* v. *Pape*, 365 U.S.167 (1961), have been alluded to in the petition for certiorari, pp. 10-11, and need not be reiterated here. Suffice it to say that this flood demonstrates beyond cavil that the traditional interests justifying use of res judicata and collateral estoppel were never more compelling than in the context of §1983 litigation. This increase in §1983 cases parallels a startling increase in state court litigation involving complaints against law enforcement officers. See table in brief of Amici Curiae (AELE, et al.), p. 14. It may be safely said that a majority, perhaps a significant majority, of §1983 claims filed against State officials, including law enforcement officers, especially those filed by convicted and imprisoned felons, are insubstantial and even frivolous. See. e.g., *Careaga* v. *James*, 474 F.Supp. 464 (E.D.Mo. 1979), aff'd, ___ F.2d ___ (8th Cir., No. 79-1723, March 17, 1980)

(suit filed by state prisoner against deceased state judge and the people of the City of St. Louis, arising out of comments made by judge when sentencing prisoner 8 years earlier); *Green* v. *Wyrick*, 428 F.Supp.732 (W.D.Mo. 1976). If the judgment of the Court of Appeals in this case is left intact, it is virtually certain that this volume of unnecessary litigation will increase - and the risk will be enhanced that harassed District Judges may pay insufficient attention to meritorious claims.

The risks inherent in the uncontrolled relitigation, via §1983, of constitutional claims already fully litigated in state court have been perceived by many commentators, see Currie, *Res Judicata: The Neglected Defense*, 45 U.Chi.L.Rev. 317 (1978); Note, *The Preclusive Effect of State Judgments on Subsequent 1983 Actions*, 78 Col.L.Rev. 610 (1978); Note, *Limiting the Section 1983 Action in the Wake of Monroe* v. *Pape*, 82 Harv.L.Rev. 1486 (1969), including those who oppose the use of traditional res judicata and collateral estoppel principles to give preclusive effect to state court judgments, see McCormack, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Claims, Part II*, 60 Va.L.Rev. 250, 257 (1974); Averitt, *Federal Section 1983 Actions after State Court Judgment*, 44 U.Colo.L.Rev. 191, 196-97 (1972); see also Theis, *Res Judicata in Civil Rights Act Cases: An Introduction to the Problem*, 70 Nw.L.Rev. 859 (1970). It would seem, however, that the use of traditional rules of preclusion would be preferable to devising new mechanisms for dealing with duplicative §1983 litigation, especially in view of the prevailing standards of liability under §1983.

It is by now well settled that the standards of liability under §1983 are quintessentially tort liability standards, *Pierson* v. *Ray*, 386 U.S. 547 (1967); *Rodriguez* v. *Jones*, 473 F.2d 599 (5th Cir. 1973; although the statute by no means creates a general federal law of torts, see *Paul* v. *Davis*, 424 U.S. 693 (1976). Accordingly, in articulating liability under §1983, this Court has recognized various defenses derived from defenses available

under the common law of torts. E.g., *Stump* v. *Sparkman*, 435 U.S. 349 (1978); *Imbler* v. *Pachtman*, 424 U.S. 409 (1976); *Pierson* v. *Ray, supra*. In somewhat the same vein, this Court has authorized the "borrowing" of analogous state statutes of limitations to preclude the assertion of stale claims under the federal civil rights acts. Compare *Johnson* v. *Railway Express Agency*, 421 U.S. 454 (1975) with *Green* v. *Ten Eyck*, 572 F.2d 1233 (8th Cir. 1978).

Principles of res judicata and collateral estoppel are of ancient provenance and are firmly embedded in Anglo-American jurisprudence. Long before §1983 was enacted, it was recognized here and in England that prior judgments - even of courts of foreign jurisdictions - could and should be accorded preclusive effect in subsequent actions, whether the action sound in tort or otherwise. See, e.g., *Erwin* v. *Henry*, 5 Mo. 469 (1838); *Green* v. *Sarmiento*, 10 F. Cas. 1117, 1118-19 (No. 5,760) (C.C.Pa. 1810); *Gray* v. *Swan*, 1 Har. & John. 142 (Md. 1801); *Outram* v. *Morewood*, 3 East 347, 102 Eng.Rep. 630 (K.B. 1803); *Kingston's (Duchess) Case*, 1 East, P.C. 468, 168 Eng.Rep.175, 20 S.Tr. 355 (1776); *Hughes* v. *Cornelius*, 2 Show. 232, 89 Eng. Rep. 907 (K.B. 1682); cf. *Hustler* v. *Raines*, 2 Lut. 1414, 125 Eng.Rep. 780 (C.P. 1695); see generally, Vestal & Coughenour, *Preclusion/Res Judicata Variables: Criminal Prosecutions*, 19 Vand.L.Rev. 683, 684 notes 5-7 (1966); M. Bigelow, *A Treatise on the Law of Estoppel* 6, 103 ff., 190 ff. (1913); 2 (Part 2) J. Smith, *A Selection of Leading Cases on Various Branches of the Law* ("*Smith's Leading Cases*") 744-94 (1885). Indeed, as early as 1596, a Justice of Common Pleas is reported as saying that "barr by judgment amounts to a release in law; or otherwise sutes would be infinite." *Ferres* v. *Wignoll*, Noy 58, 74 Eng.Rep.1027 (1596). Of course, as anyone who has studied under the eminent legal historian Samuel Thorne can attest, it would be rash to suppose that all of the principles enunciated in *Montana* v. *United States, supra*, were accepted and invariably applied by common law courts since Bracton's day,

see *Hustler* v. *Raines, supra*; but neither was the exclusionary rule viewed as a necessary and powerful vindicator of individual rights until a comparatively late date. Compare *Weeks* v. *United States*, 232 U.S. 383 (1914) with *Entick* v. *Carrington*, 19 St.Tr. 1030 (1765). The point is that the need for principles of preclusion, and the interests served by such principles, have been perceived by the common law courts for centuries, and must be regarded as inherent in the law of torts giving substance to federal law under §1983.

The overwhelming majority of the lower federal courts have consistently recognized the appropriateness of applying principles of res judicata and collateral estoppel in §1983 actions. E.g., *Martin* v. *Delcambre*, 578 F.2d 1164 (5th Cir. 1978); *Winters* v. *Lavine*, 574 F.2d 46 (2d Cir. 1978); *Rimmer* v. *Fayetteville Police Dept.*, 567 F.2d 273 (4th Cir.1977); *Mastracchio* v. *Ricci*, 498 F.2d 1257 (1st Cir. 1974), cert. denied, 420 U.S. 909 (1975); *Brown* v. *DeLayo*, 498 F.2d 1173 (10th Cir. 1974); *Thistlethwaite* v. *City of New York*, 497 F.2d 339 (2d Cir.), cert.denied, 419 U.S. 1093 (1974); *Brazzell* v. *Adams*, 493 F.2d 489 (5th Cir. 1974); *Metros* v. *United States District Court*, 441 F.2d 313 (10th Cir. 1970); *Kauffman* v. *Moss*, 420 F.2d 1270 (3d Cir.), cert. denied, 400 U.S. 846 (1970); *Brown* v. *Chastain*, 416 F.2d 1012 (5th Cir. 1969), cert. denied, 397 U.S. 951 (1970); *Hammer* v. *Town of Greenburgh*, 440 F.Supp. 27 (S.D.N.Y 1977), aff'd from bench, 578 F.2d 1368 (2d Cir. 1978); *Smith* v. *Sinclair*, 424 F.Supp. 1108 (W.D. Okla. 1976); *Rodriguez* v. *Beame*, 423 F.Supp. 906 (S.D.N.Y. 1976); *Palma* v. *Powers*, 295 F.Supp. 924 (N.D.Ill. 1969); compare *Reich* v. *City of Freeport*, 527 F.2d 666 (7th Cir. 1976) and *Williams* v. *Liberty*, 461 F.2d 325 (7th Cir. 1972) with *Brubaker* v. *King*, 505 F.2d 534 (7th Cir. 1974); compare *Mulligan* v. *Schlachter*, 389 F.2d 231 (6th Cir. 1968) with *Curtis* v. *Tower*, 262 F.2d 166 (6th Cir. 1959); but see *Ney* v. *California* 439 F.2d 1285 (9th Cir. 1971). All of these cases involve the giving of preclusive effect to state court judgments on federal constitutional issues. Many involve

underlying state criminal proceedings, e.g., *Mastracchio* v. *Ricci, supra; Thistlethwaite* v. *City of New York, supra; Metros* v. *United States District Court, supra; Kauffman* v. *Moss, supra.*[3] The better-reasoned cases have relied primarily on the traditional justifications for applying preclusion principles, relying only secondarily, if at all, on the availability of federal habeas corpus relief to §1983 plaintiffs seeking to attack state criminal judgments. Compare *Thistlethwaite, supra, Metros, supra,* and *Palma* v. *Powers, supra,* with *Rimmer* v. *Fayetteville Police Dept., supra.*

The majority view of the lower courts is clearly correct. Indeed, until the instant case, the Court of Appeals for the Eighth Circuit had generally adhered to that view. See, e.g., *Goodrich* v. *Supreme Court of South Dakota,* 511 F.2d 316 (8th Cir. 1975). The Court of Appeals argued in its opinion here, see 606 F.2d 798-99, Pet. Cert. A-9 - A-11, that the unavailability of federal habeas corpus after *Stone* v. *Powell,* 428 U.S. 465 (1976), and the need to accord a federal forum to criminals alleging unlawful search and seizure claims justify an exception to the rule. As will be shown at greater length, *post,* such arguments do not overcome the need for application of the established federal law of res judicata and collateral estoppel to actions brought under §1983.

The majority view of the lower courts on the issues in this case is in accord with the weight of general federal precedent, with the overwhelming weight of common law authority, and with the tort liability standards underlying §1983 and is in accord with common sense. The lower federal courts have recognized the pressing need for preclusion of duplicative litigation through

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[3] In view of the extensive safeguards engrafted on state criminal proceedings under the Fourteenth Amendment, see, e.g., *Gideon* v. *Wainwright,* 372 U.S. 335 (1963), there is seemingly more reason to accord preclusive effect to a state criminal judgment than to a state civil judgment on a federal constitutional issue.

the medium of §1983, lest friction between federal and state courts be increased, defendants (such as Petitioners here) be unfairly subjected to multiple and potentially inconsistent adjudications, and the essential respect of a republican society for its judiciary be seriously eroded by the spectacle of endless litigation and at times inconsistent decisions. The error of the Court of Appeals in ignoring the foregoing legal principles and compelling public interests demands reversal of the judgment below.

B. The Legislative History of 42 U.S.C. §1983 Discloses No Intention to Interfere With Application of Neutral and Established Principles of Law By Federal Courts In Dealing With State Judgments, Or of Undermining the Concurrent Jurisdiction of State Courts Over Federal Constitutional Questions, So Long As the State Courts Provided Adequate Opportunities For Full and Fair Litigation of Federal Claims.

The Court of Appeals, in deciding to deny Petitioners the defense of collateral estoppel in this case, relied heavily on its concept of "the special role of federal courts in protecting civil rights." 606 F.2d 799, Pet. Cert., A-10. See also, McCormack, *supra*, 60 Va.L.Rev. 276-77 (arguing that §1983 is the "civil analogue" of federal habeas corpus). However, an examination of the legislative history and the legal and historical context of the statute involved here leads to the firm conviction that the Court of Appeals' conception of the intended role of the federal courts in cases such as this was patently erroneous.

Petitioners recognize the perils of reliance on the legislative history of the Ku Klux Klan Act, 17 Stat. 13 (42d Cong., 1st Sess. 1871). Compare *Monroe* v. *Pape, supra,* with *Monell* v. *Dept. of Social Services, supra.* The legislative history of Section 1 of that Act, whence 42 U.S.C. §1983 is derived, has been canvassed at length by this Court in other cases, see *Monroe, supra,* and *Mitchum* v. *Foster*, 407 U.S. 225 (1972), and is probably best described as equivocal. Nevertheless, a careful reading of

the legislative history of the 1871 Act and its kindred predecessor, the Civil Rights Act of 1866, 14 Stat. 27 (38th Cong., 1st Sess., 1866) reveals that Congress did not intend to disturb the jurisdiction of state courts over federal questions. Rather, it is reasonably clear that Congress conceived that it was enacting what Mr. Justice Douglas described as a "supplementary" remedy, a federal remedy available when the state remedy, adequate in theory, was not available in practice. *Monroe* v. *Pape, supra*, 365 U.S. 173-74, 183.

The overriding concern of Congress in 1871 was with the activities of the Ku Klux Klan and its sympathizers, who were perceived as acting in a powerful combination to thwart the enforcement of state and federal law in such fashion as to nullify the rights of black citizens and Republicans in the South. See, e.g., Cong. Globe, 42d Cong., 1st Sess., 319-21 (Rep. Stoughton), 333-35 (Rep. Hoar), 412 (Rep. Roberts), 456-57 (Rep. Coburn). Thus, most of the debate concerned §2 of the Act, now 42 U.S.C. §1985, relating to conspiracies to deprive citizens of federal rights; the first section received substantially less attention from proponents and opponents alike.

True, the 42d Congress did perceive that it was altering the relationship between state and federal courts, see, e.g., Cong. Globe, 42d Cong., 1st Sess., 653 (Sen. Osborn), but this alteration was seen in the context of giving the federal courts new jurisdiction, rather than abolishing the existing and recognized jurisdiction of the state courts, even as to federal questions.[4] On several occasions, the "concurrent" jurisdiction of the state and federal courts was alluded to, but the passages reveal no intention to disturb established law in that area. See, e.g., id., 514 (Rep. Poland), 695 (Sen. Edmunds). Even Rep. Coburn, who

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[4] General federal question jurisdiction was not conferred on federal courts until 1875. See *Monroe* v. *Pape, supra*, 365 U.S. 252 (Frankfurter, J., dissenting).

spoke passionately in favor of trusting our federal courts, spoke also of his belief that, by reason of the 1871 Act, "the tumbling and tottering States will spring up and resume the long-neglected administration of law in their own courts, giving, as they ought, themselves, equal protection to all." Id., 460. That the supplementary nature of the remedy being provided was clearly understood is perhaps best illustrated by the following passages from the remarks of Rep. Sheldon and Senator Edmunds. Rep. Sheldon, who voted for the bill, discussed the manner in which national power should be exercised to protect federal rights (id., 368):

> Convenience and courtesy to the States suggest a sparing use, and never so far as to supplant the State authority except in cases of extreme necessity, and when the State governments criminally refuse or neglect those duties which are imposed upon them.... It is as much the duty of the national Government to support that of the State, and to maintain its authority, as it is to provide an ultimate remedy for the redress of every wrong inflicted upon the citizen.
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> . . . It seems to me to be sufficient, and at the same time to be proper, to make a permanent law affording to every citizen a remedy in the United States courts for injuries to him in those rights declared and guaranteed by the Constitution. . . .

Senator Edmunds, the floor manager of the bill in the Senate, in concluding debate on the measure, observed (id. 697-98):

> The bill, like all bills of this character, in its first and second sections, is a declaration of rights and a provision for the punishment of conspiracies against constitutional rights, and a redress for wrongs. It does not undertake to overthrow any court. It does not undertake to make any war. It does not undertake to interpose itself out of the regular order of the administration of law. It does not at-

> tempt to deprive any State of the honor which is due to the punishment of crime. It is a law acting upon the citizen like every other law, and it is a law to be enforced by the courts through the regular, and ordinary processes of judical administration, and in no other way, until forcible resistance shall be offered to the quiet and ordinary course of justice.

The view that §1983 was not intended to provide a mechanism for collateral attack on state judgments reached after full and fair litigation is reinforced by the Civil Rights Act of 1866, the first statute to create federal jurisdiction in civil rights cases, see *Hague* v. *C.I.O.*, 307 U.S. 496 (1939), and the progenitor of §1 of the Ku Klux Klan Act. See *Monroe* v. *Pape, supra*, 365 U.S. 256 (Frankfurter, J., dissenting). Even in 1866, with the Civil War a much more vivid memory than in 1871, Senator Trumbull, the leading Senate advocate of the 1866 Act, spoke in favor of overriding President Johnson's veto as follows (Cong. Globe, 38th Cong., 1st Sess., p. 1759):

> So in reference to this third section, the jurisdiction is given to the Federal courts of a case affecting the person that is discriminated against. Now, he is not necessarily discriminated against, because there may be a custom in the community discriminating against him, nor because a Legislature may have passed a statute discriminating against him; that statute is of no validity if it comes in-conflict with a statute of the United States; and it is not to be presumed that any judge of a State court would hold that a statute of a State discriminating against a person on account of color was valid when there was a statute of the United States with which it was in direct conflict, . . .

Thus, the legislative history of §1983 and other civil rights legislation, which seemingly can be construed *in pari materia*, does not support the inference that principles of res judicata and collateral estoppel cannot be applied in §1983 actions. Nor do *Mitchum* v. *Foster, supra,* or *England* v. *Louisiana Medical Examiners*, 375 U.S. 411 (1964) require a different conclusion.

In *Mitchum*, the relief sought was an injunction against pending state court proceedings involving First Amendment rights; the state court had not yet reached a final judgment on the merits. It has been said that *Mitchum* was wrongly decided, see Currie, *supra*, 45 U.Chi.L.Rev. at 327; be that as it may, the case does not express an overriding policy of state court inadequacy, id., 333, and it is readily distinguishable from the case at bar, for there was no judgment to estop the plaintiff in *Mitchum*. See, e.g., *Clark* v. *Lutcher*, 436 F.Supp. 1266 (M.D.Pa. 1977), in which the §1983 action was commenced prior to rendition of state court judgment on the merits.

Similarly, in *England* v. *Louisiana Medical Examiners*, it was held in substance that a litigant who has first invoked federal jurisdiction, and is remitted to state court by reason of the abstention doctrine, is not perforce required to submit his federal claims to the state court for determination, but may reserve them for his return to the federal court after adjudication of the state law issues. Neither *England* nor *Mitchum* holds that §1983 permits collateral attack on state court judgments on federal constitutional issues; rather, they are exceptional situations arising precisely because §1983 does evince a Congressional policy of preserving concurrent state jurisdiction over federal constitutional questions. Cf. *Egan* v. *Wisconsin State Board, etc.*, 332 F.Supp. 964 (E.D. Wis. 1971). Merely because *Mitchum* and *England* to some extent create a potential for a "race" to judgment, cf. *Kline* v. *Burke Const. Co.*, 260 U.S. 226 (1922), does not justify an additional sacrifice of judical economy and federal-state comity by abandoning ordinary principles of preclusion in §1983 cases. See *Zurek* v. *Woodbury*, 446 F.Supp. 1149 (N.D.Ill. 1978).

In summary, the evil sought to be remedied by Congress in 1871 was the situation in which the state courts were unable or unwilling to protect federal rights. The remedy enacted was a supplementary remedy, which left established federal principles of res judicata and collateral estoppel substantially intact and

evinced no intent to vitiate their future application in actions under §1983.

C. The "Federal Res Judicata Act", 28 U.S.C. §1738, Also Compels Application of Collateral Estoppel In §1983 Actions.

Another factor impelling adherence to federal rules of res judicata and collateral estoppel in the instant case is the so-called "Federal Res Judicata Act", 28 U.S.C. §1738. This statute was originally enacted in 1790, see 1 Stat. 122, and was reenacted in 1948, 62 Stat. 947. Both before and after the enactment of the Civil Rights Acts, §1738 was construed in accordance with its plain meaning: the statute imposed upon the federal courts the duty to give full faith and credit to state judgments to the same extent as the state court would give its own judgment. E.g., *Mills* v. *Duryee*, 11 U.S. (7 Cranch) 481 (1813); *Wayside Transp. Co.* v. *Marcell's Motor Express, Inc.*, 284 F.2d 868 (1st Cir. 1960). The statute embodies a Congressional policy that there be an end of litigation. *Wayside Transp. Co., supra.*

It has been persuasively argued that §1983 was enacted against the backdrop of the Congressional policy evinced by §1738 and, viewed in that light, no intent to delimit §1738 can be discerned in the legislative history of §1983. Accordingly, since repeals by implication are not favored, e.g., *Radzanower* v. *Touche, Ross & Co.*, 426 U.S. 148, 154 (1976), §1738 compels federal courts to give preclusive effect to state court judgments in §1983 actions seeking to relitigate issues previously decided. See generally Currie, *supra*, 45 U.Chi.L. Rev. 327-33; see also *Winters* v. *Lavine, supra*, 574 F.2d at 54-55; *Omernick* v. *LaRocque*, 406 F.Supp. 1156 (W.D. Wis.), aff'd mem., 539 F.2d 715 (7th Cir. 1976); Note, *The Preclusive Effect of State Judgments on Subsequent 1983 Actions, supra;* cf. *Williams* v. *Murdoch*, 330 F.2d 745 (3d Cir. 1964).

In the present case, the judgment of the court in Respondent's criminal case would be accorded preclusive effect

under the law of Missouri in a subsequent civil proceeding in a Missouri court. E.g., *LaRose* v. *Casey*, 570 S.W.2d 746 (Mo.App. 1978). A fortiori, under 28 U.S.C. §1738, the District Court was correct in precluding Respondent from relitigating the search and seizure claim in this §1983 action. However, Petitioners recognize that the implementation of federal statutes representing countervailing and compelling federal policies sometimes justifies departures from a strict application of the "full faith and credit" rule of §1738. *Red Fox* v. *Red Fox*, 564 F.2d 361, 365 n. 3 (9th Cir. 1977). Doubtless it will be argued that §1983 involves such countervailing and compelling federal policies.

Petitioners acknowledge that a mechanical application of §1738 to actions under 42 U.S.C. §1983 may be undesirable, insofar as it would lead to a lack of uniformity in federal decisions, since different states employ different standards of res judicata and collateral estoppel. But it does not follow that the policy enunciated by §1738 should be jettisoned; rather, the policy of §1738 to bring an end to litigation can readily be harmonized with the policy of §1983 that citizens be assured of a forum for full and fair litigation of claims of federal right. The result is the application of federal rules of res judicata and collateral estoppel.[5]

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[5] It may be argued also in this case that Petitioners failed adequately to raise the issue of §1738's applicability in the Court of Appeals and the District Court, since that statute was not specifically mentioned in Petitioners' "Suggestions in Support of Motion to Dismiss and Summary Judgment", filed together with the Motion appearing at Pet. Cert. A-25. But surely the question of the effect of §1738, "the Federal Res Judicata Act", is necessarily implied in any contention that a state judgment is entitled to preclusive effect in a federal case. Indeed, the failure of the Court of Appeals to consider §1738 in reaching its decision may well be plain error. See *Hormel* v. *Helvering*, 312 U.S. 552 (1940). In any event, before this Court, Petitioners rely on §1738 merely as adducing an additional reason for applying a federal rule of collateral estoppel to this case, although §1738 could undoubtedly serve as an independent basis for reversing the Court of Appeals.

D. Application of Federal Rules of Res Judicata and Collateral Estoppel In §1983 Actions Cannot Properly Be Conditioned On the Availability of Federal Habeas Corpus Relief.

The Court of Appeals in this case appears to have reasoned somewhat as follows: a federal forum must always be available for the full litigation of federal constitutional claims involving search and seizure; federal habeas corpus relief is no longer available to convicted felons asserting such claims; so §1983 must provide the federal remedy, and collateral estoppel perforce cannot be applied. Q.E.D. Serious flaws in the Court of Appeals' approach in this case have been explored above and given those manifold flaws, it does not require a specially lively imagination to infer that the result reached by the Court of Appeals is as much a product of dissatisfaction with the judgment of *Stone* v. *Powell*, 428 U.S. 465 (1976) as of concern for effectuating the policies of §1983. Indeed, in rejecting Petitioners' defense of collateral estoppel, the Court of Appeals devoted no attention whatever to the policy considerations underlying *Stone*.

In *Stone*, this Court held "that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." 428 U.S. 494 (footnotes omitted). In the course of its opinion, the Court reaffirmed that the exclusionary rule is a judicially created remedy "'designed to safeguard Fourth Amendment rights generally through its deterrent effect ...'" id., 486, quoting *United States* v. *Calandra*, 414 U.S. 338, 348 (1974), and concluded that, in collateral proceedings, the societal costs of the application of the exclusionary rule significantly outweighed the deterrent effect gained thereby. 428 U.S. 491-93. In assessing the societal costs of the rule's application in collateral proceedings, the Court was naturally aware that the exclusionary rule's operation is inimical to the truth-finding

process, but the Court also adverted to "serious intrusions on values important to our system of government," including effective utilization of limited judicial resources, the need for finality in criminal actions, minimization of friction between state and federal judicial systems, and the maintenance of the constitutional balance upon which federalism is founded. Id., 491 n. 31.

Stone must be read as standing for the proposition that rules of federal law fashioned by federal judges ought to be enunciated with an eye to fostering judicial economy and federal-state comity, without sacrificing the interests of justice or essential constitutional rights. Like the exclusionary rule, res judicata and collateral estoppel are essentially judge-made rules which are intended to protect important rights. Litigation is the means for vindicating rights, but it may also involve unwarranted friction and waste; res judicata and collateral estoppel reflect "the refusal of law to tolerate needless litigation." *Angel* v. *Bullington, supra*, 330 U.S. 192-93. Thus, to the extent that res judicata and collateral estoppel conserve judicial time, preserve respect for the administration of justice, prevent harassment of litigants, and minimize conflicts between federal and state courts, the application of those principles in §1983 actions is consistent with and complements *Stone* v. *Powell*. Compare *Stone, supra*, 428 U.S. 491 n. 31 with Vestal & Coughenour, *supra*, 19 Vand.L.Rev. 719.

It is true, as the Court of Appeals observed, 606 F.2d 798, Pet. Cert. A-10, that a number of courts addressing the questions presented in this case felt that the availability of federal habeas corpus relief was of importance in determining whether to apply collateral estoppel in §1983 actions. E.g., *Rimmer* v. *Fayetteville Police Dept., supra*. However, it is also true that many of the lower courts did not regard the availability of federal habeas corpus relief as crucial. E.g., *Metros* v. *United States District Court, supra*. Moreover, some courts which took note of federal habeas corpus did not regard its availability as a

predicate for giving preclusive effect to state judgments in §1983 cases, but rather saw the writ as a means to remove the bar presented by the subsisting state judgment. E.g., *Alexander* v. *Emerson,* 489 F.2d 285 (5th Cir. 1973); cf. *Moran* v. *Mitchell,* 354 F.Supp. 86 (E.D.Va. 1973). The fact that habeas corpus no longer provides a means to remove the bar of the state judgment in search and seizure cases is immaterial, so long as §1983 does not inherently require a federal forum for litigation of such claims - and it does not, as Petitioners have heretofore demonstrated.

The matter of the availability of federal habeas corpus becomes ever more ephemeral when it is recalled that collateral estoppel has been applied in other §1983 cases where the state judgment was not vulnerable to attack via habeas corpus - cases involving important federal constitutional rights. See, e.g., *Brown* v. *DeLayo, supra*; *Olitt* v. *Murphy*, 453 F.Supp. 354 (S.D.N.Y. 1978); cf. *Thistlethwaite* v. *City of New York, supra* (availability of habeas corpus at most an alternative justification for collateral estoppel).

The concern of the federal courts in §1983 cases involving prior state judgments on federal constitutional issues should be with the opportunity accorded the claimant for full and fair litigation - not with whether the forum was a state or federal forum. As previously noted, the state courts have historically been presumed capable of fully and fairly adjudicating federal constitutional issues properly before them, see, e.g., *Robb* v. *Connolly, supra*, 111 U.S. at 637; *P I Enterprises, Inc.* v. *Cataldo*, 457 F.2d 1012 (1st Cir. 1972); as even the framers of the early civil rights acts acknowledged. E.g., Cong. Globe, 38th Cong., 1st Sess., 1759. Certainly this Court is rightly "unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States." *Stone* v. *Powell, supra*, 428

U.S. at 493-94 n. 35.[6] If preclusive effect could be given to state judgments in §1983 cases before *Stone* v. *Powell*, there is no sound reason to suspend the practice now.[7]

E. Persons Bringing Actions Under §1983 Are Barred From Relitigating Constitutional Claims Which Have Been Raised, Fully Litigated and Decided Adversely to Them In Prior State Criminal Proceedings.

From the foregoing, it is manifest that §1983 was not intended to foster career litigants, *Thistlethwaite* v. *City of New York, supra*, and the availability of the defenses of res judicata and collateral estoppel is consonant both with the tort liability standards inferred from §1983 and with a virtually unbroken line of federal precedents respecting the finality of state court judgments on federal constitutional issues properly before them. It necessarily follows that federal rules of res judicata and collateral estoppel can and must be applied to actions brought under 42 U.S.C. §1983 to preclude needless litigation. "Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion." *Angel* v. *Bullington, supra*, 330 U.S. at 193.

The question now becomes, what are the governing federal principles of collateral estoppel applicable to actions such as the case at bar?

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[6] To the tendentious civil rights advocate, not even the federal courts are free of the taint customarily ascribed to state courts. See Note, *Civil Rights Enforcement and the Selection of Federal District Court Judges*, 21 St.L.U.L.J. 385, 426 (1977).

[7] Petitioners would observe that many of the difficulties created by this cause could be obviated by the abandonment of the exclusionary rule and the recognition of §1983 as a grant of jurisdiction similar to that of §301 of the Labor-Management Relations Act, 29 U.S.C. §185. See Pet. Cert, 12-14. Of course, that question is not precisely before the Court at this time.

First, there must be a final judgment of a state court. There is some dispute over whether a state judgment pending on appeal is entitled to preclusive effect, but the weight of the better-reasoned cases would accord preclusive effect to the final judgment of the state court of first instance, notwithstanding pendency of an appeal. See *DiGiangiemo* v. *Regan*, 528 F.2d 1262, 1265 (2d Cir. 1975), cert. denied, 426 U.S. 950 (1976); *Kurek* v. *Pleasure Driving & Park Dist.*, 583 F.2d 378 (7th Cir. 1978), cert. denied, 99 S.Ct. 873 (1979); *Rodriguez* v. *Beame, supra*; but see *Nichols Charolais Ranch, Inc.* v. *Barton*, 460 F.Supp. 228 (M.D.Fla. 1975), aff'd mem., 587 F.2d 809 (5th Cir. 1979). (Of course, if there is a possibility that the state judgment will be reversed on appeal, and there is a risk that in the meantime the statute of limitations will run against the claim of the §1983 plaintiff, the federal court could temporarily stay proceedings in the §1983 case. Cf. *England* v. *Louisiana Medical Examiners, supra.*) It is irrelevant whether the prior state proceeding is civil or criminal. *Emich Motors Corp.* v. *General Motors Corp., supra; Mastracchio* v. *Ricci, supra*; see generally Vestal & Coughenour, *supra*, 19 Vand.L.Rev.711-15, 716-17.

The §1983 plaintiff must have been a party to the prior state proceeding. *Montana* v. *United States, supra;* see also *Parklane Hosiery Co.* v. *Shore, supra; Blonder-Tongue Laboratories* v. *University of Illinois Foundation, supra; Mastracchio* v. *Ricci, supra.* This requirement will be readily met when the prior state proceeding was a criminal case, as here, where the plaintiff was the defendant in the state case. The fact that the defendant in a criminal case may be "compelled" to submit his federal constitutional claims to the state court as an "involuntary" litigant is not material. See *Winters* v. *Lavine, supra,* 574 F.2d at 58. A state defendant who submits his federal constitutional claims to a state court to avoid conviction, at the risk of precluding a §1983 claim, is not put to a "Hobson's choice." Compare Theis, *Res Judicata in Civil Rights Cases, supra*, 70 Nw.L.Rev. 872-73. Such an argument assumes, first, that §1983 was in-

tended to assure unlimited availability of a federal forum, and, second, that the state courts cannot really be trusted to give full and fair consideration to criminals defendants' constitutional claims. Both assumptions are manifestly false.[8] As adumbrated above, §1983 was not intended to guarantee availability of a federal forum, nor did it supplant the firmly embedded principle that state courts are constitutionally required to give effect to paramount federal law and will not be presumed to be indifferent to their duty. See *Stone* v. *Powell, supra,* 428 U.S. at 493-94 n. 35; *Robb* v. *Connolly, supra; Palma* v. *Powers, supra,* 295 F.Supp. at 937; discussion *ante,* pp. 19-23.

The next question must be whether the issues presented by the §1983 litigation are in substance the same as those resolved by the state judgment. See *Montana* v. *United States, supra,* 440 U.S. at 155. Normally, the record of the state proceeding must be examined to determine if the §1983 plaintiff's claim was "distinctly put in issue and directly determined" in the state case. See *Winters* v. *Lavine, supra; Kauffman* v. *Moss, supra,* 420 F.2d 1274; see also *Emich Motors Corp.* v. *General Motors Corp., supra.* The examination of the record of the state case also permits the federal court to ascertain whether the state court afforded a "full and fair opportunity" for litigation of the federal constitutional issues - the critical factor in deciding whether to preclude relitigation of a claim in a §1983 action. Cf. *Montana* v. *United States, supra,* 440 U.S. at 163-64 n. 11 and accompanying text; Note, *supra,* 78 Col.L.Rev. 642-52. If the record reflects that the state court denied assistance of counsel or any other critical element of procedural due process, the judgment may not be entitled to preclusive effect, although it

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[8] Ironically, one of the arguments Respondent will undoubtedly make for affirmance of the judgment below is that he is not estopped, because the state court here upheld his constitutional claim by partially granting his motion to suppress. See Respondent's Brief Opposing Certiorari, p. 5.

would seem that unfairness or procedural inadequacy should not be lightly inferred.

Another inquiry to be made is whether controlling facts or legal principles have changed significantly since the state court judgment. *Montana* v. *United States, supra*, 440 U.S. 155. To cite an extreme example, a §1983 suit involving Fifth Amendment rights would have to be viewed differently if the state criminal judgment relied on legal rules obtaining before *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Similarly, if the state judgment proceeded on factual assumptions which materially differed from the facts raised in the subsequent §1983 action, collateral estoppel will not apply. *Montana* v. *United States, supra*, at 159.

Most elementary of all, the examination of the prior state judgment must determine whether it adjudicated the relevant issues adversely to the §1983 plaintiff. There is some sentiment that only a judgment on the merits of a constitutional claim, necessary to the decision reached by the state court, is entitled to preclusive effect. See, e.g., *Winters* v. *Lavine, supra; Fernandez* v. *Trias Monge,* 586 F.2d 848 (1st Cir. 1978). Petitioners would agree that the judgment ought to be on the merits, but an inquiry into the "necessity" of resolution of the constitutional issue is probably unwise, except where the state criminal judgment rests on a guilty plea.[9]

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[9]An important question is raised where - unlike the case at bar - the §1983 plaintiff, either through a guilty plea or otherwise, has not *actually* litigated the constitutional claim he subsequently seeks to raise in the federal suit. See, e.g., *Brazzell* v. *Adams,* supra; see also *Prosise* v. *Haring,* —F.Supp. — (E.D.Va. 1979), appeal pending, 4th Cir. No. 79-6310; cf. *Metros* v. *United States District court,* supra. In such cases, it would seem advisable to inquire whether the constitutional claim, if raised successfully, could have materially affected the result. If so, the failure to raise the claim or to expressly reserve it, cf. *England* v. *Louisiana Medical Examiners,* supra, must estop the claimant from relitigating it in federal court under principles of collateral

The final question is "whether other special circumstances warrant an exception to the normal rules of preclusion." *Montana* v. *United States, supra,* 440 U.S. at 162. This Court has identified three general exceptions: (1) the exception which obtains for unmixed questions of law in successive actions involving substantially unrelated claims; (2) the case of the litigant who has properly invoked federal jurisdiction to consider federal claims, and who is then remitted to a state court and compelled, without his consent, to accept a state court's determination of those claims, *England* v. *Louisiana Medical Examiners, supra;* and (3) manifest unfairness or inadequacy in the state procedures involved. 440 U.S. 162-64. The lattermost question is of course crucial, since the policy of §1983 clearly envisages federal review of constitutional claims when the state remedy is adequate in theory but unavailable in practice. *Monroe* v. *Pape, supra,* 365 U.S. 174. It will always be answered when the federal court decides if the constitutional claim previously decided by the state court was fully and fairly litigated. The other exceptions will probably be of little moment in §1983 cases following state criminal judgments.

The principles outlined above are already being applied by the majority of the inferior federal courts, and their adoption by this Court will further the important interests underlying *Stone* v. *Powell* and the many other decisions which restrict the "fine opportunities for needlessly multiplying litigation" afforded by our federal system.[10] *Angel* v. *Bullington, supra,* 330 U.S. 192.

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estoppel. See *Angel* v. *Bullington,* supra; *Brazzell* v. *Adams,* supra. Of course, a counseled guilty plea could also be deemed a waiver of most constitutional claims. Compare *Menna* v. *New York,* 423 U.S. 61 (1975) with *Tollett* v. *Henderson,* 411 U.S. 258 (1973).

[10]It may perhaps be argued that the interests underlying the federal law of preclusion are regularly sacrificed in federal habeas corpus litigation, see, e.g., *Townsend* v. *Sain,* 372 U.S. 293 (1963), and the concern for federal rights evinced in such cases is readily transferable to §1983 actions. Such an argument would be misdirected, for the

Law enforcement officers will not be placed in the anomalous position of being mulcted by federal courts for actions which had previously been held lawful by state courts. The already monstrous volume of civil rights litigation will not be exacerbated by innumerable new claims of illegal search, brought by prisoners who no longer enjoy the medium of habeas corpus to clog the federal courts with largely frivolous claims. Above all, meritorious claims, such as those alleged in *Monroe* v. *Pape, supra,* will not be affected in the slightest, and will in fact benefit from the likelihood of receiving quicker and more effective attention from the District Courts.

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primary interest to be vindicated in habeas corpus is the right of the individual to be free from actual confinement in violation of constitutional rights, and so an exception to general preclusion principles can be justified, despite the societal costs in terms of lack of finality of judgments. See Vestal & Coughenour, *supra,* 19 Vand.L.Rev. at 716; cf. *Brown* v. *Allen,* 344 U.S. 443 (1953). Similarly, the lack of preclusive effect of state criminal judgments in federal *criminal* proceedings is in no wise anomalous. See, e.g., *United States* v. *Smith,* 595 F.2d 1176 (9th Cir. 1979); *United States* v. *Agee,* 440 F.Supp. 614 (E.D.Pa. 1977). Although the same act can be both a state crime and a federal crime, the state courts simply do not enjoy concurrent jurisdiction over federal crimes, whereas they could entertain a §1983 claim in the first instance. See, e.g., *Shapiro* v. *Columbia Union Nat. Bank & Trust Co.,* 576 S.W.2d 310 (Mo. banc.), cert. denied, 100 S.Ct. 60 (1979). When the state court does not properly have jurisdiction of the case in which a federal claim is raised, no preclusive effect need be accorded its judgment. Cf. *Rooker* v. *Fidelity Trust Co., supra; Spatt* v. *New York,* 361 F.Supp. 1048 (E.D. N.Y. 1973) (three-judge court), aff'd mem., 414 U.S. 1058 (1973).

II. THE COURT OF APPEALS MUST BE REVERSED BECAUSE, AS A MATTER OF LAW, RESPONDENT IS ESTOPPED TO MAINTAIN HIS ACTION UNDER 42 U.S.C. §1983 ON THE BASIS OF THE SAME CLAIM OF UNLAWFUL SEARCH WHICH THE RECORD INDISPUTABLY SHOWS TO HAVE BEEN RAISED, FULLY AND FAIRLY LITIGATED, AND DECIDED ADVERSELY TO HIM IN A PRIOR STATE CRIMINAL PROCEEDING.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), F.R.Civ.P. Respondent's complaint and cross-motion for summary judgment, allowing for the liberal construction of *pro se* pleadings, see *Estelle* v. *Gamble,* 429 U.S. 97 (1976), reveal that the gravamen of his claim is the warrantless intrusion into his home. See Pet. Cert., A-22, paragraphs 6 and 7, A-23, A-31, paragraph 3. The authenticated copy of the Respondent's motion to suppress and the state trial court's judgment thereon, id., A-26 - A-29, demonstrates beyond peradventure that Respondent, with the assistance of counsel, raised an identical claim of unlawful search in his state court proceeding, A-28, a hearing was held, and the warrantless search of Respondent's home was held to be constitutional. There is no dispute that this ruling was part of a state proceeding resulting in a final judgment of conviction of Respondent for possession of heroin and assault. Compare id., A-22, paragraph 5, with A-13. In the courts below, Respondent has never contended that the state proceedings suffered from any procedural irregularity or unfairness; he is dissatisfied only with the result.

Viewing the record of this case in light of the appropriate principles of federal collateral estoppel discussed above, one must conclude that the District Court's judgment was correct. Respondent directly placed in issue before the state court the

same claim of unlawful search which he has alleged in his complaint under 42 U.S.C. §1983. The claim was fully and fairly litigated, and actually and necessarily[11] determined by the state court, which properly had jurisdiction of the case. The judgment of the state court was adverse to Respondent. Thus, all of the ingredients for application of federal collateral estoppel are present. See *Montana* v. *United States, supra; Winters* v. *Lavine, supra; Mastracchio* v. *Ricci, supra; Metros* v. *United States District Court, supra; Rodriguez* v. *Beame, supra.* The addition of allegations concerning conspiracy (Pet. Cert. A-21) avails Respondent nothing: the conspiracy claim falls once the legality of the search is established. Cf. *Mosher* v. *Saalfeld,* 589 F.2d 438 (9th Cir.), cert. denied, 99 S.Ct. 2883 (1979); *Smith* v. *Sinclair,* supra, 424 F.Supp. at 1113-14.

Respondent has intimated that, assuming collateral estoppel applies to §1983 actions, it does not operate as a bar to his claim, because the decision of the state court was not adverse to him. Indeed, Respondent suggests that collateral estoppel in this case could operate "offensively" to estop Petitioners from denying illegality of the search of his home. See Brief Opposing Certiorari, pp. 5-7.

The former contention must turn upon a construction of the pleadings. It is true that the state court suppressed the evidence which was found hidden in drawers or among tires. Pet. Cert., A-27. If the complaint here can be read as alleging that the Petitioners conspired to conduct, and did conduct, a search which was illegal in scope, then perhaps Respondent is not estopped.

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[11]Items seized during the search included drugs in plain view. Pet. Cert., A-27. Use of this evidence was obviously necessary to convict Respondent of the offense of possession. Compare *Jones* v. *Bales,* 58 F.R.D. 453 (N.D.Ga. 1972), aff'd, 480 F.2d 805 (5th Cir. 1973), in which items were seized but not offered in evidence in the state proceeding, so the state court never had occasion to rule on the validity of the search.

However, such a strained construction of the pleadings is not warranted, and was indulged in by neither the District Court nor the Court of Appeals. 466 F.Supp. 515, Pet. Cert., A-3; 606 F.2d 797, Pet. Cert., A-6. Respondent himself asserted in his complaint that "it is crystal clear that the Defendants acted in a conspiracy to violation of [sic] the U.S. Constitutional Rights of the Plaintiff to search his house without a search warrant, when in fact the Defendants could easily have secured the house and then obtained a search warrant from a judge." Pet. Cert., A-23. There can be little doubt that Respondent was keenly aware that a claim for the seizure of the items (including drugs) which were suppressed by the state court would furnish no basis for liability in damages on the part of Petitioners, see *Carey* v. *Piphus,* 435 U.S. 247 (1978), *Mastracchio* v. *Ricci,* supra, 498 F.2d at 1262; so he chose to rest his claim instead on the alleged illegality of the warrantless intrusion into his home - the same claim that was presented to the state court and necessarily rejected, notwithstanding suppression of *some* of the items seized.

As for the "offensive" use of collateral estoppel, Petitioners would note that such an application of the doctrine is largely confided to the discretion of the trial court, subject to the qualification that such use is not permitted where its operation would be unfair to the defendant; and it is possible that estoppel of a party who never appeared in the prior action, or never directly controlled litigation of the issue, would not be consonant with due process. Compare *Parklane Hosiery Co.* v. *Shore, supra,* 439 U.S. at 326, with *Blonder-Tongue Laboratories, Inc.* v. *University of Illinois Foundation, supra,* 402 U.S. at 324; see also *Henderson* v. *Goeke,* 329 F.Supp. 1160 (E.D. Pa. 1971), aff'd mem., 491 F.2d 749 (3d. Cir. 1973). Moreover, while Petitioners would acknowledge that there is no absolute barrier to "offensive" use of collateral estoppel in §1983 actions, such use would be of little practical moment, for law officers who are defendants in §1983 cases would nonetheless retain their right to assert their "good faith-

reasonable belief" defense, and a trial would almost always be in order on that issue. See *Pierson* v. *Ray, supra;* see also *Gomez* v. *Toledo,* 602 F.2d 1018 (1st Cir. 1979), cert. granted, 48 USLW 3451 (Jan. 15, 1980) (bad faith and malice must be pleaded and proved by §1983 plaintiff).

In summary, the Court of Appeals erred in refusing to recognize and apply appropriate federal principles of collateral estoppel to this case. Had those principles been properly applied, the District Court would have been affirmed in granting partial summary judgment for Petitioners on the claim of unlawful search and seizure. This is not a case in which the constitutional rights of Respondent are being "balanced" against "other interests." Respondent's constitutional rights are not at issue; those rights have been accorded full and fair attention in his criminal case. The issue here is whether Respondent is entitled to more than one full and fair opportunity to litigate the same claim, which happens to be a claim of constitutional violation. The answer is emphatically *no*. Fairness to defendants and to plaintiffs with meritorious §1983 claims alike demands that neutral principles of collateral estoppel apply to §1983 cases as much as to any other federal case. But the cry will be heard, must not violations of federally protected rights be deterred? Yes, but is there any deterrent effect when two courts of competent jurisdiction reach diametrically opposite results on the basis of the same law and the same facts? Federally protected rights do not, can not, suffer when persons are foreclosed from relitigating alleged violations *ad infinitum*. Needless, duplicative litigation helps no one, and may do a great deal of harm; the general welfare demands that a period be put to litigation. Further commentary would be superfluous.

CONCLUSION

The judgment of the Court of Appeals must be reversed, and the case remanded either for entry of judgment in accordance with the District Court's order insofar as it granted partial summary judgment, or, in the alternative, for reconsideration in light of the established federal rules of collateral estoppel applicable to §1983 actions, which the Court of Appeals ought not to have disregarded.

Respectfully submitted,

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